IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6803 of 2007()

CRIME NO. 692/07 OF KOCHI KASABA POLICE STATION

PETITIONERS/ACCUSED

IRFAN HABEEB, S/O LATE ABOOBAKKAR,
KUDAVALLI PARAMBU, PARRY JUNCTION,
THOPPUMPADY, KOCHI-5.

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KOCHI KASBA POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 6803 of 2007

- -

Dated this the 13th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 9th accused. Altogether there are 10 persons arrayed as accused now. The petitioner, along with the co-accused, faces allegations for offences punishable, inter alia, under Sections 120B, 395 and 364A I.P.C. The crux of the allegations is that the accused persons have hatched a conspiracy. The defacto complainant, in pursuance of the design of the conspirators, was prompted to consume alcohol heavily. While he was proceeding to his house along with one of the accused, as per the prior deliberation, the vehicle was requested to be stopped by the accused in the car. At that time all other accused, including the petitioner, reached the scene on their motor cycles. They attacked the defacto complainant. They made it to appear that they were attacking the co-accused, who was travelling in the

vehicle also. Costly articles were thieved using force. The defacto complaint was taken to his house. There also articles were removed stealthily. The defacto complainant was compelled to execute a cheque. He later complained before the police. Crime was registered. Investigation is in progress. The defacto complainant in the F.I. statement lodged by him had complained that he and the co-accused, who was travelling along with him, were attacked by some miscreants. It is only in the course of investigation that the conspiracy was revealed and the complicity of other accused came to light. The petitioner has not been arrested yet. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He submits that the version of the defacto complainant cannot be swallowed without a pinch of salt. In any view of the matter, the petitioner does not deserve to endure the trauma of arrest and detention. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is prayed.

3. The learned Prosecutor opposes the application. He submits that though the defacto complaint did not initially know that the person

travelling with him was also one of the offenders, it was only later in the course of investigation that the entire plot was revealed and it was realised that the person, who was travelling with him was also one of the conspirators. The learned Prosecutor submits that the available materials indicate the complicity of the petitioner. He had, in pursuance of the conspiracy hatched, been a party to persuade the defacto complainant to consume liquor. He had also reached the scene of the crime and had actively involved himself in the crime that was committed. In any view of the matter, the petitioner is not entitled for grant of anticipatory bail, submits the learned Prosecutor.

4. In the nature of the peculiar facts and circumstances of this case, the learned Prosecutor was directed to place the case diary before me. I have perused the case diary. I have gone through the F.I. statement. I have gone through the confession statement of some of the accused. I find merit in the opposition raised by the learned Prosecutor. The available indications do clearly point to the complicity of the accused. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion

under Section 438 Cr.P.C. in favour of the petitioner. I agree with the learned Prosecutor that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. The learned counsel for the petitioner submits that the defacto complainant is a very influential person and he apprehends physical harm if he were to surrender directly before the Investigating Officer. He prays that this Court may indulgently permit him to surrender before the learned Magistrate and then, if necessary, to go in the police custody for interrogation. Facility for that may be provided, it is prayed.

6. In the peculiar facts and circumstances of this case, I am satisfied that the said request can be accepted.

7. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on or before 20.11.2007 at 11 a.m. He may file application for regular bail after giving sufficient prior notice to the learned Prosecutor in charge of the case. Needless to say, it shall be open to the Investigator, if that be necessary, to apply for custody of the petitioner. Appropriate orders shall be passed by the learned Magistrate expeditiously on both applications, if filed.

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 20.11.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(c) If the petitioner were arrested prior to his surrender on 20.11.2006 as directed in clause (1) above, he shall be released on his executing a bond for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 20.11.2007.

(R. BASANT)
Judge

tm